

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #7	CCRB Case #: 201809265	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/06/2018 9:18 AM	Location of Incident: 2328 12th Avenue	Precinct: 26	18 Mo. SOL 5/6/2020	EO SOL 12/21/2020	
Date/Time CV Reported Tue, 11/06/2018 10:44 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 11/06/2018 10:44 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Torturo	02377	945065	026 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Marino Nunez	05538	958998	026 PCT
2. LT Angel Leon	00000	917866	026 PCT
3. POM Kevin Persaud	02797	949480	026 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Torturo	Abuse: Police Officer Christopher Torturo threatened to arrest § 87(2)(b) [REDACTED]	

Case Summary

On November 6, 2018, § 87(2)(b) filed this complaint online at the CCRB website.

On November 6, 2018, at approximately 9:18 a.m., in the vicinity of 1238 12th Avenue in Manhattan, Police Officer Christopher Torturo and Police Officer Marino Nunez of the 26th Precinct, stopped § 87(2)(b) for making an improper turn at the intersection of West 125th Street and 12th Avenue. The officers approached § 87(2)(b)'s vehicle and PO Nunez ordered him to produce his license and registration. § 87(2)(b) complied and the officers returned to their vehicle to write the summons. When they went back to § 87(2)(b)'s vehicle to issue him the summons, § 87(2)(b) refused to accept the summons. PO Torturo informed § 87(2)(b) that if he did not accept the summons he would be arrested for the obstruction of governmental administration (**Allegation A: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was placed in the back of the officer's police vehicle and PO Torturo called a supervisor to the location. Lt. Angel Leon of the 26th Precinct arrived at the scene and spoke with § 87(2)(b) who then agreed to accept the summons. Lt. Leon ordered PO Torturo and PO Nunez to remove § 87(2)(b)'s handcuffs. § 87(2)(b) was issued summons # § 87(2)(b) for improper turn (Board Review 01).

The investigation obtained the body-worn camera footage from PO Torturo and PO Nunez that captures this incident (Board Review 02) (Board Review 03).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Christopher Torturo threatened to arrest § 87(2)(b)

§ 87(2)(b) (Board Review 04) testified that he was stopped in his vehicle as he entered the parking lot of Fairway Market (his destination) and parked. PO Nunez and PO Torturo exited their vehicle and approached, § 87(2)(b) lowered his window. PO Nunez came to § 87(2)(b)'s driver's side window, asked for his license and registration, and informed § 87(2)(b) that he had made an improper turn at the intersection of 125th and 12th Avenue. § 87(2)(b) denied making an improper turn and produced his license and registration. PO Nunez took his documents and § 87(2)(b) calmly requested that a supervisor respond because he did not think the officers understood him. The officers ignored his request and returned to their vehicle. Approximately 30 minutes later PO Torturo approached § 87(2)(b) on the driver's side to issue the summons. § 87(2)(b) still had his windows down and requested a supervisor again. PO Torturo informed § 87(2)(b) that he could either take the summons or be arrested. § 87(2)(b) requested that a supervisor respond a third time. PO Torturo ordered § 87(2)(b) to step out of his vehicle or else he would be placed under arrest. PO Torturo opened § 87(2)(b)'s door and § 87(2)(b) exited the vehicle. He was then handcuffed and put into the back of the police vehicle. Lt. Leon was called to the scene and spoke with § 87(2)(b). Lt. Leon asked § 87(2)(b) why he did not cooperate with his officers and § 87(2)(b) informed him that the officers had all his information. After Lt. Leon spoke to PO Torturo and PO Nunez, PO Nunez and PO Torturo removed him from the vehicle and took the handcuffs off. § 87(2)(b) took the summons and went back to his vehicle.

PO Torturo (Board Review 05) testified that once PO Nunez prepared the summons, they returned to § 87(2)(b)'s vehicle to issue him the summons. At that time § 87(2)(b) had his windows rolled up and stated that he refused to accept the summons. PO Torturo informed § 87(2)(b) that his refusal to accept the summons could lead to his arrest. § 87(2)(b) requested that a supervisor respond and PO Torturo informed him that a supervisor could be made available to him at the stationhouse but that he had to accept the summons or he would be arrested for Obstructing

Government Administration (“OGA”). PO Torturo explained that if a civilian does not accept a summons they could be arrested for OGA because they are preventing an officer from conducting his duties. He stated that, “PO Nunez’s duty at that time was to issue the motorist § 87(2)(b) the summons for a traffic infraction and his refusal to accept the summons obstructed PO Nunez’s duty as a police officer.” He further stated that the officer issuing the summons must personally observe the infraction and issue the summons to that individual. An officer “could not just leave it on the floor next to him.” PO Torturo explained to § 87(2)(b) that if he did not agree with the summons he could fight in traffic court. § 87(2)(b) refused to accept the summons again and PO Torturo ordered him to step out of the vehicle. § 87(2)(b) exited the vehicle and was placed into handcuffs by PO Nunez and PO Torturo.

§ 87(2)(g)

PO Nunez stated that if civilians refuse to accept a traffic violation summons they can be charged with governmental obstruction; since they are the one that committed the offense, the officer must physically deliver the summons to the violator. When asked how this situation differed from the issuance of parking tickets, PO Nunez explained that when a vehicle is issued a parking summons the car itself is the subject of the violation. In § 87(2)(b)’s situation, he was observed committing the violation and therefore needed to be issued the summons directly. PO Nunez could not leave the § 87(2)(b)’s summons on the dashboard for him to retrieve later because the summons was not going to the vehicle, it was being issued to him specifically.

As mentioned above, the investigation obtained PO Torturo’s body-worn-camera, which captured his entire interaction with § 87(2)(b) and is 19:37 minutes in length (Board Review 02). A Snag it clip was produced to show the section relevant to the allegation described below (Board Review 07). During the two-minute Snag it clip, § 87(2)(b)’s window is rolled up and PO Torturo informs § 87(2)(b) numerous times that he will be arrested if he does not take back his documents and accept the summons. PO Torturo asks § 87(2)(b) if he understands what he is being told and § 87(2)(b)’s response is not audible. PO Torturo then states that § 87(2)(b) is “under” for “discon and OGA,” and opens his door. Once the door is open, PO Torturo informs § 87(2)(b) again that he can accept the summons or be arrested. § 87(2)(b) can then be heard responding, “I do not accept the summons.” PO Torturo orders § 87(2)(b) to step out of his vehicle, which § 87(2)(b) does voluntarily. § 87(2)(b) is then handcuffed by PO Nunez and PO Torturo.

New York Penal Law Section 195.05 states that an individual is guilty of obstructing governmental administration when he obstructs, impairs, or perverts the administration of law or other governmental function by means of intimidation, physical force or interference, whether or not physical force is involved (Board Review 08).

NYPD Patrol Guide Procedure 209-09 entitled Personal Service of Summonses Returnable to Traffic Violations Bureau or Criminal Court instructs officers to request that violator sign the bottom of the summons, but also notes that if the officer feels that requesting the signature may precipitate a confrontation, the officer has the option of not requesting the signature. The same procedure further states that a motorist could destroy and discard the summons and it would not violate VTL rules. There is nothing in this procedure that instructs officers to ensure that a violator accepts a summons. (Board Review 09).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (Board Review 10).
- PO Torturo has been a member-of-service for 12 years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- On December 4, 2018, this case was sent to mediation and on May 16, 2019, it was returned to investigation as the complaint was no longer suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 11).
- A notice of claim has been sent to the New York City Office of the Comptroller and will be added to the case file upon receipt.

Squad No.: 7

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date